Although this summary sheet was likewise excluded, Pollock had previously been permitted to testify concerning "the amounts of money [profit] that were due the individual distributors" which he claimed he was holding for them. During Pollock's testimony, a summary prepared by Pollock from Vilter's files reflecting these amounts was received in evidence by the judge.

The second group of exhibits claimed by Pollock to have been improperly excluded related to certain stipulations contained in a settlement agreement entered into between Pollock and Vilter in March 1964. This agreement terminated a civil suit instituted by Vilter against Pollock. The specific stipulation in issue here provided for the assumption by Vilter of an obligation to repay any foreign distributors out of funds and assets Vilter had seized from Pollock.[6] In urging that the district judge erred in his ruling sustaining objections to these exhibits, Pollock claims here, as he did below, that these stipulations served to corroborate his defense that the funds claimed by the Government to be unreported income of Pollock actually belonged to the distributors.

We believe that the district judge's ruling that the first group of exhibits was inadmissible, if erroneous at all, amounted to mere harmless error which had no effect on the substantial rights of Pollock. The judge exhibited a great deal of liberality in permitting Pollock to testify and introduce evidence supporting his defense. All of the material contained in the first group of excluded exhibits

---

[6] The stipulation in issue read:

Plaintiffs agree to hold Defendants Earl D. Pollock, . . and Manufacturers Export Company harmless from any claims of plaintiffs' distributors against said defendants for any amounts arising from sales, transportation and insurance of plaintiffs' products.

was before the jury for its consideration through the testimony of Pollock and his accountant and other exhibits introduced by Pollock that were admitted into evidence. *United States* v. *Shavin*, 320 F.2d 308 (7th Cir.), *cert. denied*, 375 U.S. 944 (1963); *Ballantyne* v. *United States*, 293 F.2d 112 (5th Cir. 1961), *cert. denied*, 369 U.S. 302 (1962).

In addition, the district judge properly excluded Pollock's exhibits relating to the civil litigation. In so doing, he stated:

> I don't think we can start dumping into the laps of the jury that whole civil case. This man and company [Pollock and Vilter] have been litigating now, ... for five years, and this [civil] trial lasted twenty-six days, and we can't incorporate that trial by reference to this trial.

We agree that the terms of the stipulation would have no relevancy unless the issues and proceedings in the civil litigation were considered in detail by the jury. Such an undertaking would have constituted a significant departure and might well have hopelessly confused the jury. Moreover, since Pollock's theory of defense was before the jury in great detail through his own lengthy testimony, we do not believe he was prejudiced by the district judge's ruling.

Pollock's second contention is that he "never constructively received income upon which it was alleged he evaded taxation." The very tests and cases cited by him in support of this contention demonstrate that it is totally lacking in merit. Irrespective of the arrangement that Pollock claimed to have had with the foreign distributors by which he ostensibly served as a mere bailee of their "profits," the unrebutted evidence in the record demon-

strates that he appropriated the funds in question to his own use, expending them on real estate, boats, automobiles and other things. The use of this money, which was subject to Pollock's sole control unrestricted by any understanding establishing the interest of the distributors in it, is entirely inconsistent with his claimed bailment theory. On the basis of the evidence, the jury was entitled to conclude that the money in question, treated by Pollock as his own, constituted income to him which he should have reported and on which he should have paid taxes. See *Conford* v. *United States*, 336 F.2d 285 (10th Cir. 1964).

Pollock's remaining contention is without merit. FED. R. CRIM. P. 23.

The judgment of conviction is affirmed.

A true Copy:
Teste:

.....

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX C

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Chicago, Illinois 60604

Thursday, May 9, 1968

Before

Hon. WIN G. KNOCH, *Senior Circuit Judge*

Hon. LUTHER M. SWYGERT, *Circuit Judge*

Hon. WALTER J. CUMMINGS, *Circuit Judge*

No. 16352
UNITED STATES OF AMERICA
Plaintiff-Appellee
vs.
EARL D. POLLOCK
Defendant-Appellant

Appeal from the United States District Court for the Eastern District of Wisconsin.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Wisconsin, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of conviction of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, in accordance with the opinion of this Court filed this day.

APPENDIX D

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Chicago, Illinois 60604

Monday, June 17, 1968

Before

Hon. LUTHER M. SWYGERT, *Circuit Judge*

No. 16352
UNITED STATES OF AMERICA
Plaintiff-Appellee
vs.
EARL D. POLLOCK
Defendant-Appellant

Appeal from the United States District Court for the Eastern District of Wisconsin.

On consideration of the motion of counsel for defendant-appellant,

It Is Ordered that the issuance of the mandate of this Court be stayed and withheld until July 16, 1968 subject to the provisions of Rule 28 of the Rules of this Court.

APPENDIX E

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Chicago, Illinois 60604

Wednesday, July 17, 1968

Before

Hon. LUTHER M. SWYGERT, *Circuit Judge*

No. 16352
UNITED STATES OF AMERICA
Plaintiff-Appellee
vs.
EARL D. POLLOCK
Defendant-Appellant

Appeal from the United States District Court for the Eastern District of Wisconsin.

On consideration of the motion and affidavit of counsel for defendant-appellant,

It Is Hereby Ordered that the issuance of the mandate in this cause be stayed an additional thirty (30) days from and after July 16, 1968, pursuant to Rule 41(b) of the Federal Rules of Appellate Procedure.

APPENDIX F

SUPREME COURT OF THE UNITED STATES

No. ....., *October Term,* 1968

EARL D. POLLOCK,
Petitioner,

vs.

UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 10, 1968, without prejudice to the Court's consideration of whether this application was timely presented.

s/ THURGOOD MARSHALL
Associate Justice of the Supreme Court of the United States

Dated this 23rd day
of July, 1968.

APPENDIX G

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Chicago, Illinois 60604

Tuesday, June 11, 1968

Before

Hon. WIN G. KNOCH, SR., *Circuit Judge*

Hon. LUTHER M. SWYGERT, *Circuit Judge*

Hon. WALTER J. CUMMINGS, *Circuit Judge*

No. 16352
UNITED STATES OF AMERICA
Plaintiff-Appellee
vs.
EARL D. POLLOCK
Defendant-Appellant

Appeal from the United States District Court for the Eastern Division of Wisconsin.

It Is Ordered by the Court that the petition for rehearing filed in the above entitled cause be and the same is hereby denied.